

II. **INTRODUCTION**

2. On September 29, 2023, Plaintiffs sued the Trust asserting claims and causes of action for negligence arising from damages allegedly sustained to Plaintiffs' five horses, Bank of the Best, PartyLikeYouMeanIt, Avante Garde, Mighty Hot Gal, and A Sudden Wonder (collectively, "the Horses"), while they were stabled at Black Bird Ranch, which is a facility owned by the Trust.

3. In their Complaint, Plaintiffs did not state a claim upon which relief can be granted. Specifically, as alleged in paragraph 13 of Plaintiffs' Complaint, the Trust is an entity located in the State of Texas. However, as further discussed herein, the Trust lacks procedural capacity to sue or be sued under the laws of the State of Texas because it is not an individual nor an incorporated entity. Therefore, the Court should dismiss the claims Plaintiffs have asserted against the Trust.

III. **ARGUMENT AND AUTHORITIES**

4. In accordance with Rule 12(b)(6) of the Federal Rules of Civil Procedure, a court may dismiss an action for failure to state a claim on which relief can be granted. However, in evaluating such motions, a court must accept well-pleaded facts as true and construe the facts in a light most favorable to the plaintiff. *Roth v. City of Pineville*, No. 1:11-cv-02061, 2012 U.S. Dist. LEXIS 63358, at *2 (W.D. La. 2012) (citing *Arias-Benn v. State Farm Fire & Cas. Ins. Co.*, 495 F.3d 228, 230 (5th Cir. 2007)). To defeat a motion to dismiss for failure to state a claim on which relief can be granted, the plaintiff's allegations must "raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 1965 (2007) (citing 5 C. Wright & A. Miller, *Federal Practice and Procedure* § 1216, pp 235-236 (3d ed. 2004)).

5. While there is no section of Rule 12(b) that expressly allows dismissal based on the lack of capacity to be sued, a motion to dismiss under Rule 12(b)(6) is the proper procedural method of challenging a defendant's capacity to be sued. *See Lancaster v. Healthtrust Workforce Sols., LLC*, No. 4:20-CV-01957, 2022 U.S. Dist. LEXIS 108196, at *2 (S.D. Tex. 2022); *Roth*, 2012 U.S. Dist. LEXIS 63358, 2012 WL 1596689, at *1.

6. Additionally, the issue of whether a party has capacity to sue or be sued is determined by the law of the state in which the party is domiciled, incorporated, or by the law in which the court is located. Fed. R. Civ. P. 17(b). As previously discussed, the Trust is an unincorporated entity located in Texas. As such, Texas law will apply in determining whether the Trust has capacity to sue or be sued.

7. In Texas, "[t]he term 'trust' refers not to a separate legal entity but rather to the fiduciary relationship governing the trustee with respect to the trust property." *Huie v. DeShazo*, 922 S.W.2d 920, 926 (Tex. 1996). As such, "[t]he general rule in Texas (and elsewhere) has long been that suits against a trust must be brought against its legal representative, the trustee." *Ray Malooly Tr. v. Juhl*, 186 S.W.3d 568, 570 (Tex. 2006) (citing *Werner v. Colwell*, 909 S.W.2d 866, 870, 38 Tex. Sup. Ct. J. 1113 (Tex. 1995); *Smith v. Wayman*, 148 Tex. 318, 224 S.W.2d 211, 218 (Tex. 1949); *Slay v. Burnett Trust*, 143 Tex. 621, 187 S.W.2d 377, 382 (1945)).

8. In their Complaint, Plaintiffs asserted claims and causes of action against the Trust, and not against the Trust's legal representative. As such, by asserting claims against the Trust itself, Plaintiffs' claims fail as the Trust lacks procedural capacity to be sued under Texas Law. Therefore, even taking the facts alleged as true, the Court should grant this Motion as Plaintiffs failed to state a claim on which relief can be granted.

IV.
PRAYER

For these reasons, Defendant The Bonaparte Family Living Trust respectfully requests that the Court grant this Motion, and enter an order dismissing all claims and causes of action that Plaintiffs have asserted against the Trust on the basis that Plaintiffs failed to state a claim on which relief can be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document was served upon all counsel of record in the above-captioned cause, pursuant to FED. R. CIV. P. 5(b)(2)(E) on November 20, 2023 by:

Hand Delivery: _____
Electronic Service/Email: XX
Fax Transmittal: _____

/s/ James C. Erdle, Jr.
James C. Erdle, Jr.